from the sub-tenants. Strictly speaking there should have been an apportionment of the rent of each of these rooms i.e. so much for the land of which the landlord was the owner; so much for the building of which the defendant was the owner; and so much for the P.U.B. charges borne by the defendant. The learned District Judge states in his grounds: —

"the court also had regard to the fact that some of the rooms were built by the defendant. However, the court was of the opinion that no distinction should be drawn between rooms which were built by the defendant or rooms which were already in existence. . . ."

The learned District Judge is clearly in error here. The decision in *Reshty* v. *Syed Ahmed Al-Junied & Ors.*,[1] cited by him is entirely inapplicable. The learned District Judge has misapprehended that decision.

In cases where the building (rooms in this case) belongs to the tenant and the land on which it stands belongs to the landlord, it is very difficult if not impossible to apply the provisions of paragraph (g) of section 15(1) of the Act. This was pointed out very clearly by Taylor J. in *Kwek Kim Hock* v. *Ong Boon Siong*[2]: —

"It is impossible to apply paragraph (g) to these circumstances unless the rent actually paid by the occupant can be apportioned by the court, so much for the site and so much for the building, and the proportion for the rent attributable to the site exceeds 11 tenths of the ground rent. Such an apportionment would rarely be practicable and counsel for the landlord admitted that he could not attempt such an apportionment on the facts of this case. It follows that ground (g) cannot be established. . . ."

In this case, as already pointed out, there is the additional complicating factor in that the defendant paid for the P.U.B. services which therefore required a tripartite apportionment of the rent of the rooms built by the defendant. This would have been a very difficult exercise but in any case it was never attempted.

The second ground on which, in my judgment, the appeal succeeds is that there were rooms on the first floor of the premises which were let furnished. The defendant's evidence on this issue was uncontradicted and should have been accepted. Here again there should have been an apportionment, so much for the rent of the room, so much for the furniture and so much for the P.U.B. charges. The failure to do so was clearly an error of law. The opinion expressed by the learned District Judge in his judgment that "so long as the rent collected by the defendant in respect of the rooms at the above premises, exceed 110% of the rent she pays to the plaintiffs, she is in breach of section 15(1)(g) of the Control of Rent Act" is quite clearly erroneous having regard to the facts of this case.

The third ground on which, in my judgment, the appeal succeeds relates to the application of paragraph (g) of section 15(1) of the Act. In my judgment this paragraph applies in two situations. First, it applies in a case in which the tenant has sublet the whole premises to a sub-tenant. In such a case the burden of proof on a plaintiff is not a very difficult one if these are no other complicating factors. All that the plaintiff has to prove is that the tenant is collecting rent from his sub-tenant which exceeds in the aggregate 110% of the rent which the tenant pays to the plaintiff.

The second situation in which paragraph (g) applies is where the tenant has let only a part or parts of the premises and has retained and not sublet other parts of the premises as in this case. Such a situation complicates matters and the burden of proof on the plaintiff becomes difficult. In order to succeed, the plaintiff may proceed in one of two ways. First, if he can, he may prove to the satisfaction of the court, the "recoverable rent" for that part or parts of the premises which the tenant has sublet and having done that he must further prove that the tenant receives in respect of the sublet parts, rent in excess of the "recoverable rent" for those parts. The plaintiffs did not do this. They did not even attempt to do it.

The only other way in which a plaintiff may invoke paragraph (g) is by proving that the tenant receives for the sublet parts of the premises, rents which exceed in the aggregate 110% of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant and not sublet by him. This again was not done in this case. There was no apportionment of the rental between the parts sublet and the part retained by the defendant. This could have been done by taking measurements of the area of the premises retained by the defendant and not sublet and ascertaining its proportion to the total rentable area of the premises. This was not done. It was for the plaintiffs to do this. They should have put a computation before the court after having taken the necessary measurements and making the necessary calculations. The learned District Judge assumed that the defendant was occupying one-third of the premises. There was no evidence at all to support this assumption.

In the result, in my judgment, there was no satisfactory evidence before the court for the application of section 15(1)(g) of the Control of Rent Act. The appeal was accordingly allowed.

Appeal allowed.

Solicitors: *Kirpal Singh & Co.; Donaldson & Burkinshaw.*

KWAH HAI GONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) August 2, 1978]
[Singapore — Magistrate's Appeal No. 59 of 1977]

Criminal Law and Procedure — Possession of pirated copies of gramophone records — Proof that cassette tape is exact copy or reproduction of gramophone record — Whether offence to make or reproduce a single copy — Interpretation Act (Cap. 3), s. 2(1) — Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188), ss. 2 & 3.

Interpretation of Statutes — Word in plural — Whether includes singular — Interpretation Act (Cap. 3), s. 2(1).

Copyright — Gramophone record — Cassette tapes containing reproduction — Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188), ss. 2 & 3.

The appellant had been convicted of having in his possession cassette tapes alleged to contain reproductions of a gramophone record, an offence under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act. It appeared that the tapes were purchased from the appellant's shop and subsequently the records were listened to and found to contain copies of songs in which a copyright subsisted.

Held, allowing the appeal: (1) the evidence of the witnesses who heard the tape was insufficient to prove that the cassette tape was a copy or reproduction of the record in which the copyright subsisted. It was incumbent on the prosecution to prove that the cassette tape, the alleged pirated copy, was an exact copy or reproduction of the gramophone record;

(2) section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act made it an offence for a person who *inter alia* made or reproduced any copies of any gramophone record without the consent of the owner. It clearly could not have been intended by the legislature that a person who made or reproduced a single copy of a gramophone record in which a copyright subsisted was guilty of a criminal offence.

MAGISTRATE'S APPEAL.

Datuk David Marshall for the appellant.

Tan Teow Yeow, Deputy Public Prosecutor (*Fung Kwok Jen,* Deputy Public Prosecutor with him) for the respondent.

Chua Keng Loy (watching brief) for the complainants, EMI Singapore Pte. Ltd.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellant, Kwah Hai Gong, who is the managing partner of a shop, Golden City Records at 194 Cross Street, Singapore which deals in gramophone records and cassette tapes was tried and convicted on the following four charges: —

"*1st Charge*

That he, on or about the 5th July, 1976 at "Golden City Records Company", No. 194 Cross Street, Singapore 1, had in his possession for sale pirated copies of certain gramophone records to wit two cassette tapes containing E.M.I. recordings (Tracy Huang/There's A Kind of Hush and Queen/Bohemian Rhapsody) and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act, Chapter 188, 1970 Edition.

2nd Charge

That he, on or about the 5th July, 1976 at "Golden City Records Company", No. 194 Cross Street, Singapore 1, had in his possession for sale pirated copies of certain gramophone records to wit two cassette tapes containing Phonogram recordings (Brotherhood of Man/Save Your Kisses For Me and Teresa Teng/Goodbye My Love) and he had thereby committed an offence punishable under section 3(1) of the Copyrights (Gramophone Records and Government Broadcasting) Act, Chapter 188, 1970 Edition.

3rd Charge

That he, on or about the 5th July, 1976 at "Golden City Records Company", No. 194 Cross Street, Singapore 1, had in his possession for sale a pirated copy of certain gramophone record to wit one cassette tape containing Baal recording (Van McCoy/Disco Kid) and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act, Chapter 188, 1970 Edition.

4th Charge

That he, on or about the 5th July, 1976 at "Golden City Records Company", No. 194 Cross Street, Singapore 1, had in his possession for sale a pirated copy of certain gramophone record to wit one cassette tape containing Tong Aik Recording (Chang Siow Ying/Chapter 14) and he had thereby committed an offence punishable under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act, Chapter 188, 1970 Edition."

It will be necessary to deal only with the prosecution case in respect of the first charge which alleges "possession for sale (of) pirated copies of certain gramophone records to wit two cassette tapes containing EMI recordings (Tracy Huang/There's A Kind of Hush and Queen/Bohemian Rhapsody". The prosecution case was that EMI (Singapore) Pte. Ltd. is the owner of the copyright in a *gramophone record* entitled "Feelings" being a collection of songs sung by Tracy Huang and that EMI Records Ltd. is the owner of the copyright in a *gramophone record* entitled "A Night at the Opera" being a collection of musical works composed, arranged and performed by Queen.

On July 6, 1976 a Mr. John Young of Hongkong purchased six cassette tapes for $21 from the appellant's shop without asking for or obtaining a receipt. A Mr. Neil Sarsfield, the managing director of EMI (Singapore) Pte. Ltd. who listened to only two or three songs from one of these cassette tapes (Exhibit P4) which contained 16 songs, said that Exhibit P4 is a copy of a true copy of the gramophone record entitled "Feelings", the copyright in which is owned by EMI (Singapore) Pte. Ltd. There are 14 songs in this gramophone record. Mr. Sarsfield also listened to one song from another of the six cassette tapes (Exhibit P5). He said that Exhibit P5 is a copy of a true copy of the gramophone record entitled "A Night at the Opera", the copyright in which is owned by EMI Records Ltd. There are 16 songs in Exhibit P5 and there are 12 songs in the gramophone record.

The prosecution also relied on an affidavit of Mr. John Young (Exhibit P10) that on July 5, 1976 copyright subsisted in the gramophone records entitled "Feelings" and "A Night at the Opera" and that the owners of the copyright in these two gramophone records were respectively EMI (Singapore) Pte. Ltd. and EMI Records Ltd.

Section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act provides as follows: —

"Every person who makes, reproduces, imports for sale, sells, exposes or offers for sale, or has in his possession for sale, any pirated copies of any gramophone record, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand dollars, and in the case of a second or subsequent conviction to imprisonment for a term not exceeding one year or a fine not exceeding two thousand dollars or to both such imprisonment and fine."

Section 2 of the Act defines "gramophone record" to mean: —

"the material first embodying the recording of a sequence of sounds capable, by the use of that material, of being automatically reproduced aurally..."

and defines "pirated copies, in relation to any gramophone record", to mean, unless the context otherwise requires: —

"any copies of such record made or reproduced without the consent lawfully given by the owner of the copyright in such record."

It was essential, therefore, for the prosecution to prove, *inter alia,* that the cassette tape (Exhibit P4) is a copy of the gramophone record entitled "Feelings" in which copyright subsists. This is a question of fact. The evidence was that Mr. Sarsfield listened to two or three songs out of sixteen songs in the cassette tape (Exhibit P4) and compared one of the sixteen songs with one song in a gramophone record (Exhibit P10A) which is a true copy of the gramophone record in which copyright subsists. This evidence clearly falls short of proving that the cassette tape (Exhibit

P4) was an exact copy or reproduction of the gramophone record (Exhibit P10A). By virtue of the definition of "pirated copies" in the Act it was incumbent on the prosecution to prove, at the very least, that the cassette tape (Exhibit P4), the alleged pirate copy, is an exact copy or reproduction of the gramophone record (Exhibit P10A). In my judgment, that evidence, by itself, was clearly insufficient to prove that the cassette tape (Exhibit P4) is a copy or reproduction of the gramophone record (Exhibit P10A) or is a copy or reproduction of the gramophone record the copyright in which is owned by EMI (Singapore) Pte. Ltd. Similarly, the prosecution evidence relating to the cassette tape (Exhibit P5) was insufficient to prove that that cassette tape is a copy or reproduction of the gramophone record, the copyright in which is owned by EMI Records Ltd.

Another reason why, in my judgment, the prosecution in respect of all the charges must fail *in limine* is to be found in section 3(1) of the Act. This section, read with the definition section, makes it an offence for a person who, *inter alia*, makes or reproduces any *copies* of any gramophone record without the consent of the owner of the copyright in such record. *Prima facie*, therefore, it would not be an offence to make *one* copy of a gramophone record without the consent of the copyright owner unless the provision in the Interpretation Act that in every written law words in the plural include the singular applies to the word "copies" in section 3(1) of the Act.

Under section 2(1) of the Interpretation Act words in the plural shall include the singular "unless there is something in the subject or context inconsistent with such construction". It is to be observed that the use of the plural word "copies" instead of the singular word "copy" is repeated in sub-sections (2), (3), (4) and (6) of the Act. It is to be observed that the plural word "copies" is again used in section 4 of the Act. It is to be observed that in section 2 of the Act, the definition section, the plural word "copies" is defined and not the singular word "copy". It is to be observed that the expression "any pirated copies" is used throughout the Act and not the expression "any pirated copy" which would have been grammatically correct if the intention of the legislature was that it would be an offence under section 3(1) of the Act to make, reproduce, etc. etc. even a single copy of a gramophone record without the consent of the copyright owner. In my judgment, the deliberate use of the plural word "copies" in the context of section 3(1) which creates a criminal offence, punishable with fine or imprisonment, for the infringement of copyright in gramophone records is sufficient to exclude the operation of the Interpretation Act.

In my opinion, the exclusion of the operation of the Interpretation Act to the provisions of section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act is consonant with common sense and the principle of strict construction of a penal statute. It clearly could not be intended by the legislature that a person who makes or reproduces a single copy of a gramophone record in which a copyright subsists is guilty of a criminal offence.

Accordingly, the conviction in respect of the 1st charge is set aside. For the same reasons the convictions in respect of the other charges are also set aside.

Appeal allowed.

Solicitors: *David Marshall.*

W.T. BERGE v. SALAMAH BINTE SALIM

[O.C.J. (Choor Singh J.) August 8, 1978]
[Singapore — Divorce Petition No. 802 of 1978]

Family Law — Divorce — Jurisdiction — Marriage registered in Singapore — Husband domiciled in Canada — Women's Charter (Cap. 47), s. 80.

Women's Charter — Domicile — Petitioner not domiciled in Singapore — Scope of s. 80, Women's Charter (Cap. 47).

In this case the husband petitioned for the dissolution of his marriage on the ground of his wife's adultery. The parties were married in a civil ceremony conducted by the Registrar of Marriages under the provisions of the Women's Charter and the marriage was registered in Singapore. The husband was however domiciled in Canada.

Held: as the husband was not domiciled in Singapore, the court has no power to grant him a decree of divorce.

DIVORCE.

Dennis Tan for the petitioner.

R. Ramason (Mrs.) for the respondent.

Choor Singh J.: In these proceedings, the husband petitioned for the dissolution of his marriage on the ground of his wife's adultery.

The parties were married at the Registry of Marriages, Singapore, on the 15th day of December, 1973. The petitioner who was born in Canada, and professes the Christian faith came to work in Singapore shortly before the said marriage. The respondent is a Muslim by religion and as both parties wanted to adhere to their respective religions they got married in a civil ceremony conducted by the Registrar of Marriages under the provisions of the Women's Charter (Cap. 47).

The petitioner is domiciled in Canada and it was contended on his behalf that notwithstanding the fact that he is not domiciled in Singapore, the court has jurisdiction under section 80(1)(a) of the Women's Charter (Cap. 47) to grant the petitioner a decree of divorce. Section 80 of the Women's Charter provides as follows:

"80.—(1) Nothing herein shall authorize the court to make any decree of divorce except —

(a) where the marriage has been registered or deemed to be registered under the provisions of this Act; or

(b) where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and

(c) where the domicile of the parties to the marriage at the time when the petition is presented is in Singapore."

It was submitted on behalf of the petitioner that as his marriage is registered under the Women's Charter, his case falls under section 80(1)(a) and the court has therefore power to grant him a decree of divorce.

In my judgment, counsel for the petitioner has misconstrued the provisions of section 80(1) of the